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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/466,947	12/20/1999	DALE D. PETERSON	55288USA1A	1762

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EXAMINER

LEWIS, RALPH A

ART UNIT	PAPER NUMBER
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3732

DATE MAILED: 07/30/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.  
**09/466,947**

Applicant(s)  
**Peterson**

Examiner  
**Ralph Lewis**

Art Unit  
**3732**



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE three MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on May 28, 2003
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-4, 6-8, 10-19, 21-24, and 26-32 is/are pending in the application.
- 4a) Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 7, 8, 16, 27, 28, and 31 is/are allowed.
- 6) ☒ Claim(s) 1-4, 6, 10, 13-15, 17-19, 21-24, 26, 29, 30, and 32 is/are rejected.
- 7) ☒ Claim(s) 11 and 12 is/are objected to.
- 8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some\* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_ 6) ☐ Other: \_\_\_\_\_

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**Indicated Allowability of Claim 15 Withdrawn**

The indicated allowability of claims 15 and 20 (the limitations of claim 20 were included in claim 17) is withdrawn in view of the newly discovered reference(s) to Duis et al (6,054,090). Rejections based on the newly cited reference(s) follow.

**Rejections based on Prior Art**

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-4, 6, 10, 13-15, 17-19, 21-24, 26, 29, 30 and 32 rejected under 35 U.S.C. 103(a) as being unpatentable over Duis et al (6,054,090).

Duis et al disclose product containers 112 (apparently 12 in Fig 4) for containing contact lenses. Duis et al does not explicitly disclose that the containers having chambers are “polymeric” as claimed, but one of ordinary skill in the art (as well as ordinary consumer) would have readily recognized that the container obviously be made of plastic as is conventional in the art. The Duis et al product containers 112 include a wall forming a label 130 (or 30) which is made of multiple layers of polymers of contrasting colors. The inner layer(s) is interpreted as

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part of the claimed polymeric body and the outer layer(s) is interpreted as the claimed coating. A laser is used to ablate an outer layer to provide for a “product-variable indicia such as a lot number and expiration date” (column 3, lines 28- 34). The laser engraved lot number and expiration date meets applicant’s claimed “species” mark limitation. In the discussion of the prior art, Duis et al indicates that in addition to the product variable-indicia there is typically unchanging indicia such as brand names (note column 1, lines 10-20). Duis et al does not explicitly state that the containers 112 also contain unchanging indicia (e.g. brand names), however, one of ordinary skill in the art in view of the earlier disclosure regarding the prior art would have found it obvious to have provided the label 130 with an unchanging indicia (e.g. brand name) so that the consumer can be made aware of the brand of product in the container. This unchanging indicia (brand name) meets applicant’s “genus identification mark” limitation. Moreover, one of ordinary skill in the art would have found it obvious to have spaced the brand name from the laser engraved mark so that they could be read. In regard to claim 10, contact lenses are typically packaged emersed in saline solution (i.e. a flowable material), to have included saline solution with the Duis contact lenses would have been obvious to one of ordinary skill in the art.

**Allowable Subject Matter**


Claims 7, 8, 16, 27, 28 and 31 are allowed.

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Claims 11 and 12 are objected to as being dependent on a rejected based claim, but would be allowable if rewritten in independent form to include all of the limitations of the claims from which they depend.

Any inquiry concerning this communication should be directed to Ralph Lewis at telephone number (703) 308-0770. Fax (703) 872-9302. The examiner works a compressed work schedule and is unavailable every other Friday. The examiner's supervisor, Kevin Shaver, can be reached at (703) 308-2582.

R.Lewis  
July 24, 2003

  
Ralph A. Lewis  
Primary Examiner  
AU3732